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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN JOSE DIVISION

13  
14 IN RE APPLE & AT&TM ANTI-TRUST  
LITIGATION

CASE NO. C 07-05152 JW

**NOTICE OF PENDENCY OF ACTION OR  
OTHER PROCEEDING**

**[CIVIL LOCAL RULE 3-13]**

Judge: Honorable James Ware

1 Defendant Apple Inc. (“Apple”) hereby notifies the Court, pursuant to Civil Local  
 2 Rule 3-13, of the pendency of another action which involves the same or similar subject matter  
 3 and substantially all of the same parties as the instant consolidated action. An action pending in  
 4 the United States District Court for the Southern District of New York, *Kliegerman v. Apple Inc.*  
 5 *and AT&T Mobility LLC*, Case No. 1-07-CV-08404-PKC (“*Kliegerman*”), and this consolidated  
 6 action involve the same defendants (Apple and AT&T Mobility LLC), and challenge the same  
 7 agreement between Apple and AT&T Mobility LLC (“ATTM”) concerning the iPhone, alleging  
 8 that the agreement violates the antitrust and unfair competition laws. In addition, like this  
 9 consolidated action, *Kliegerman* also challenges various business conduct related to the iPhone  
 10 and software updates to the iPhone and purports to be a class action brought on behalf of all  
 11 purchasers of the iPhone.

12 *Kliegerman* was filed on August 27, 2007, in the Supreme Court of the State of  
 13 New York, County of New York, Index No. 111681/2007. Apple removed the action on  
 14 September 27, 2007 to the United States District Court for the Southern District of New York.  
 15 The original complaint in *Kliegerman*, which was brought against only Apple, alleged that Apple  
 16 failed to adequately warn iPhone purchasers that the iPhone was locked to only accept ATTM  
 17 SIM cards, that SIM card unlocking codes would not be provided to iPhone owners, and that  
 18 iPhone owners would incur roaming charges when traveling abroad. The sole claim for relief  
 19 was based on alleged violations of New York General Business Law § 349.

20 Plaintiff *Kliegerman* amended his complaint on November 16, 2007. The  
 21 Amended Complaint alleges that Apple and ATTM entered into what plaintiff calls an unlawful  
 22 agreement under which ATTM will be the exclusive provider of phone and data services for the  
 23 iPhone in the United States and Apple will allegedly receive a portion of ATTM’s profits.  
 24 *Kliegerman* Amended Class Action Complaint (“ACAC,” attached hereto as Exhibit 1) ¶¶ 54,  
 25 55. The Amended Complaint further alleges that through the use of a software lock and a  
 26 software update, Apple has prohibited iPhone owners from unlocking their phones for use with  
 27 cellular telephone service providers other than ATTM. *Kliegerman* ACAC ¶¶ 73-83. Based on  
 28 these allegations, the Amended Complaint asserts counts for monopolization and attempted

1 monopolization in violation of Section 2 of the Sherman Act, unfair business practices under  
2 California Business & Professions Code § 17200 and the laws of other states, trespass to chattels,  
3 and violation of the Magnuson-Moss Warranty Act. In short, the factual allegations and legal  
4 claims of the *Kliegerman* case and this consolidated action are substantially similar, and are all  
5 based on the same alleged agreements and practices of Apple and ATTM. In addition, plaintiffs  
6 in both this consolidated action and in *Kliegerman* purport to represent classes consisting of all  
7 purchasers of iPhones in the United States. *Kliegerman* ACAC ¶ 85.

8 On December 6, 2007, counsel for Apple notified the Honorable P. Kevin Castel,  
9 United States District Judge, Southern District of New York, of Your Honor's Order  
10 consolidating the *Smith v. Apple* and *Holman v. Apple* cases. A copy of that letter is attached  
11 hereto as Exhibit 2.

12 Apple believes that transfer of the *Kliegerman* action to this Court will avoid  
13 conflicts, conserve resources, and otherwise promote efficient determination of the actions, and  
14 plans to bring a motion to transfer *Kliegerman* to this Court pursuant to 28 U.S.C. §1404(a).  
15 Under Judge Castel's Individual Practices, Apple submitted a letter to Judge Castel on December  
16 18, 2008 requesting a pre-motion conference at which Apple would seek leave to file a motion to  
17 transfer the *Kliegerman* case to the Northern District of California; a copy of Apple's letter to  
18 Judge Castel is attached hereto as Exhibit 3. On December 19, 2007, Judge Castel issued an  
19 Order waiving the pre-motion conference, granting Apple leave to proceed with the motion to  
20 transfer, and adjourning the time to respond to the Amended Complaint pending a decision on  
21 the motion to transfer; a copy of Judge's Castel's Order is attached hereto as Exhibit 4.

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1 Dated: December 20, 2007

Respectfully submitted,

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LATHAM & WATKINS LLP

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By /s/ Christopher S. Yates

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